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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	No. 08 CR 888
Government,)	
)	Chicago, Illinois
vs.)	
)	April 14, 2011
ROD BLAGOJEVICH,)	
)	11:42 o'clock a.m.
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Government:

THE HONORABLE PATRICK J. FITZGERALD,
UNITED STATES ATTORNEY
BY: Reid J. Schar
Carrie E. Hamilton
Christopher Niewoehner
Debra Bonamici
Assistant United States Attorneys
219 South Dearborn Street;
Suite 500
Chicago, Illinois 60604

Court Reporter:

Blanca I. Lara, CSR, RPR
219 South Dearborn Street
Room 2504
Chicago, Illinois 60604
(312) 435-5895

1 APPEARANCES (continued:)

2

3 For Defendant Rod Blagojevich:

4 KAPLAN & SOROSKY
5 BY: Sheldon M. Sorosky
6 158 West Erie
Chicago, Illinois 60610
(312) 640-1776

7

8 LAW OFFICE OF Elliott Riebman
BY: Elliott Riebman
9 158 East Erie
Chicago, Illinois 60610
(847) 814-2900

10

11

12 OFFICES OF AARON B. GOLDSTEIN
BY: Aaron Benjamin Goldstein
13 6133 South Ellis
Chicago, Illinois 60637
(773) 752-6950

14

15 OFFICES OF LAUREN FAUST KAESEBERG
BY: Lauren Faust Kaeseberg
16 2140 N. Lincoln Park West
Suite 307
17 Chicago, Illinois 60614
(773) 517-0622

18

19

Also present:

20

For the Associated Press:

21

22 Sonnenschein, Nath & Rosenthal, LLP
By: Natalie J. Spears
23 233 South Wacker Drive
Suite 7800
24 Chicago, Illinois 60606
(312) 876-8000

25

1 (The following proceedings were had in open
2 court:)

3 THE CLERK: 2008 CR 888, United States versus
4 Blagojevich.

: 42AM

5 MR. SCHAR: Good morning, Judge.

6 Reid Schar, Chris Niewoehner, Carrie Hamilton
7 and Debra Bonamici on behalf of the United States.

: 45AM

8 MR. SOROSKY: Sheldon Sorosky, S-o-r-o-s-k-y,
9 and Aaron Goldstein, G-o-l-d-s-t-e-i-n, and Elliott
10 Riebman, and Lauren Kaeseberg on behalf of
11 Mr. Blagojevich.

12 MS. SPEARS: Good morning, Your Honor.

13 Natalie Spears, S-p-e-a-r-s, on behalf of
14 Chicago Tribune.

: 45AM

15 THE COURT: I think maybe I'll deal with your
16 matter first.

: 45AM

17 I have before me, and I'm sure other counsel
18 do, a motion by a media representative to intervene
19 expressing a concern about the filing under seal of
20 entire motions. I obviously have read the motions.
21 My assumption is that they were filed under seal
22 because everybody wants to get their motions on file
23 in time. I agree with you, that large portions of
24 the motions can be unsealed and they can prepare
25 redacted versions of it, but in an excess of

: 45AM

1 caution, particularly on the eve of the beginning of
2 proceedings, I think that's what happened. So what
3 I'm going to do is I'm going to ask the parties to
4 prepare the various motions, probably with
5 relatively minor redactions and get them on file as
6 soon as possible. I don't think that this is a
7 matter that's going to be much in dispute, because
8 some of them should not have been filed entirely
9 under seal.

10 MS. SPEARS: Thank you, Your Honor. And in
11 fact the parties prior to coming here while we were
12 outside the hall had indicated that they were going
13 to do that as well.

14 THE COURT: Yeah. This is not a difficult
15 issue, because as soon as I saw your motion, having
16 read the motions myself, I realized they probably
17 shouldn't have been filed that way.

18 MS. SPEARS: If I could just make a request,
19 Your Honor? One is that going forward, it would be
20 helpful, obviously if Your Honor could direct that
21 wholesale sealing of pleadings in the first
22 instances not happen, and to the extent that the
23 parties need to file something under seal, as the
24 Seventh Circuit has directed, the majority of
25 argument and whatever can be made public should be

1 made public in the first instance, and also that
2 just that Your Honor would stay involved in the
3 process which is important to the media and the
4 public, obviously, so that the parties don't have
5 carte blanche to seal whatever they feel to seal and
6 with Your Honor having the last word, if you will,
7 to be a check in the process.

8 THE COURT: I actually think that this is
9 what I told them. I also don't think it's going to
10 be a problem in the future, and the reason I don't
11 think it's going to be a problem in the future is I
12 think this process existed because of the number of
13 motions that were filed and because of the necessity
14 to resolve these things relatively soon. I think
15 under ordinary circumstances would it not happen,
16 and I believe what I've said now is sufficient
17 caution to the parties. And if it turns out to be
18 not sufficient, I can address it in a more concrete
19 way.

20 MS. SPEARS: Thank you.

21 would there be a date certain? I think
22 Ms. Bonamici had indicated by the end of the week
23 next week would be doable.

24 MS. BONAMICI: We've spoken, we think that
25 would be reasonable.

1 THE COURT: All right. And if this turns out
2 to be a persistent problem, we'll set up a procedure
3 to address it, but I don't think it's necessary
4 since I believe, basically, the, lawyers had the
5 same reaction to the motion I did, which is is that
6 the motion had merit, your motion had merit.

7 okay?

8 MS. SPEARS: Thank you, Your Honor.

9 THE COURT: Sure.

10 Now we can deal with the various motions.

11 MR. SCHAR: Yes, Judge.

12 THE COURT: How about motion for a
13 continuance, we can deal with that one first.

14 MR. SCHAR: I believe it's fully briefed with
15 both a response, reply, and a surreply.

16 THE COURT: It has pretty much everything in
17 it that it could possibly have.

18 Any further comments anybody wants to add?

19 MR. SCHAR: No, Judge.

20 MR. SOROSKY: well, we would just state, Your
21 Honor, the motion for a continuance is based on the
22 fact that usually two to three weeks before trial,
23 even in a complex trial like this, the defense
24 attorneys can primarily just concentrate on the
25 actual trial. Because of a flurry of pretrial

1 motions, perhaps somewhat unanticipated by anyone
2 but nevertheless around, defense counsel have
3 been required to divide their time between actual
4 trial preparation and spending time responding to
5 these motions, and that is the only reason why we've
6 asked for a short brief continuance for that narrow
7 reason, and that's all.

8 THE COURT: You move to respond to this?

9 MR. SCHAR: No, Judge.

10 THE COURT: Motion for a continuance is
11 denied, and my reasons are that there is nothing in
12 what was disclosed, particularly with respect to the
13 minimization issue, that would significantly alter
14 the preparation of either side with this case.

15 I also consider the fact that we're not
16 dealing with an ordinary case, we're dealing with a
17 retrial on a fairly large number of counts that have
18 already been tried. So the level of understanding
19 of the defense of what they're going to be facing is
20 quite high, extraordinarily high, because they've
21 seen most of it already.

22 Moreover, because of the government's action
23 with respect to certain counts, the legal issues are
24 less complex than they were before. The
25 instructions will be simpler, the presentation of

1 the government's case will be shorter and more
2 streamlined than it was before, so there's virtually
3 nothing new and there's been plenty of time to deal
4 with whatever might possibly be new. There is, in
5 this case, more than adequate time to prepare and I
6 see no reason to grant the motion for a continuance,
7 the motion is denied.

8 The next issue, the medical records of the
9 witness Cari. Any final words from anybody?

10 MR. SCHAR: No, Judge.

11 THE COURT: What?

12 MR. SCHAR: No, Your Honor.

13 MS. KAESEBERG: Your Honor, it's fully
14 briefed before you, so the our arguments made in our
15 reply is that this is such a unique circumstance,
16 this isn't just a fishing expedition as the
17 government contends to gain medical records of a
18 witness. This is a witness who displayed behavior
19 after testifying that indicates that his
20 self-reporting as to his medical condition and
21 medications may not be accurate. It may be
22 accurate, we believe that we're entitled to discover
23 what medical conditions and medications he may be
24 on, and that's contained in our reply.

25 THE COURT: What I have in this motion is, at

1 least from the defense side, is a series of medical
2 opinions voiced by lawyers. The single most
3 striking thing I found is the idea that because of
4 what happened outside the courthouse when what I
5 derived from the photographs, the still photographs
6 that were given to me, is a witness who bumps into
7 someone or is bumped by someone and falls to the
8 ground. I suppose there might be some expert
9 somewhere who studies the nature of implications
10 that can be drawn from the witness's response in
11 that particular instance, but I don't see any
12 support for any expert opinion on that. And what I
13 saw was this, I saw an individual testifying about
14 an issue in which no one disputes is well within his
15 area of legal expertise. The man was involved in
16 this because he knows the law of fundraising, and
17 his perceptions on that, his testimony and the
18 evidence that's offered with respect to that, to his
19 mental state with respect to that, give no reason to
20 make further inquiry into his medical history.

21 And I think defense knows this, because
22 that's why they made a big point of his falling down
23 to the ground after being bumped or bumping into
24 some media person and says, well, this shows some
25 difficulty in perception. I don't get the point,

1 and the reason I don't get the point is you're
2 dealing with a an individual on the witness stand
3 talking about a field in which he is an expert and
4 quite familiar with and then you have a reaction of
5 something in which I suspect he is not an expert,
6 and that is being confronted by a large number of
7 media people and television cameras walking out of
8 courtroom.

9 I am unwilling to assume and there is no
10 basis given for me to assume even the possibility
11 that what happened to him outside the courthouse has
12 any relevance to his ability to perceive the events
13 that happened involving his own specialties.
14 Lawyers like Mr. -- in fact, lawyers, in general,
15 don't spend a lot of time dealing with media scrums.
16 And the fact that he went to the ground strikes me
17 as telling me nothing about his mental state or his
18 ability to perceive. The motion struck me as having
19 a certain desperation hinge to it, but maybe it
20 didn't, maybe it was a heartfelt view by persons
21 untrained and who offered me no supporting
22 affidavit. So with respect to the disclosure of
23 medical records, which the government I accept does
24 not have --

25 MR. SCHAR: Correct, Judge.

1 THE COURT: -- is denied.

2 Next is the motion to reconsider with respect
3 to probable cause. Any final words with respect to
4 this one from anybody?

5 MR. SCHAR: No, Judge.

6 MR. SOROSKY: No; none.

7 THE COURT: Part of the briefing offered by
8 the defendant in this case is that their waiver of
9 these claims, which was made before the first trial,
10 without any attempt until very recently to withdraw
11 or revoke that waiver, that the reason that I upheld
12 the waiver is that I thought it was somehow the law
13 of the case. This is not true. I didn't think it
14 was the law of the case, I recognize I do have the
15 power to excuse the waiver. My decision was not
16 made on the theory that I was bound to decide it as
17 I did. I believe that the waiver is binding and
18 should be binding. There is nothing that would
19 persuade me that the interest of justice require
20 that the waiver be revoked. There is no sufficient
21 basis to make me feel that there is strong
22 justification for reopening an issue that had been
23 closed on the grounds of the merits expressed for
24 granting the motion.

25 More importantly, I believe that the

1 government was entitled to rely on the waiver, that
2 the government would be prejudiced if the waiver was
3 revoked, and that even in the event that the waiver
4 were revoked, the result would be exactly the same.
5 This is a pointless motion and for this reason I do
6 not intend to reconsider the merits.

7 The next item I have is improper
8 minimization. With respect to this motion what I
9 have is a fully briefed motion and accompanying the
10 fully briefed motion I have the special report
11 submitted to the Chief Judge in connection with some
12 of the very issues that are raised; although,
13 ironically, not the most important one from the
14 point of view of the defense, and the hearing held
15 by Chief Judge Holderman with respect to those
16 issues. Anybody want to say anything other than
17 what's already been briefed?

18 MR. SCHAR: No, Judge.

19 MR. SOROSKY: No, Your Honor.

20 THE COURT: With respect to the minimization,
21 I believe there was adequate segregation between the
22 Assistant United State's Attorneys who are trying
23 this case and the Assistant United State's Attorneys
24 who monitored the level of minimization and the
25 execution of the minimization. There was a computer

1 problem in the initial stages which may have
2 resulted in some passages, calls not being
3 minimized, or to put it in simple terms the
4 recording machine was not turned off, there is no
5 possible showing or attempt to show prejudice from
6 that to the defense in this particular case. And in
7 fact, although I'm not called upon to decide this,
8 it is probably true that what the government
9 original thought should have been minimized because
10 it was potentially privileged probably wasn't
11 privileged at all and the minimization was
12 absolutely unnecessary.

13 But the real point of the defense motion is
14 addressed not to failure of minimization but to
15 excessive minimization, that the government
16 over-minimized it. The problem with that argument
17 is is that when Congress allowed Title 3 intercepts,
18 as far as the government was concerned at the time,
19 the government would have been perfectly happy to
20 record every single word and write it down, and it
21 was not the government that decided particularly to
22 minimize, it was Congress that imposed minimization.
23 They thought it would be too intrusive without
24 minimization. And the government accepted that, and
25 the main reason they accepted it was because if they

1 didn't accept it there would be no Title 3. It is
2 inherent in the decision of Congress to require
3 minimization that some things that might have been
4 relevant, might be helpful to the prosecution, might
5 be helpful to the defense would not be recorded and
6 the decision was made that preservation of privilege
7 was more important than preservation of pieces of
8 evidence that somebody might want to have recorded.
9 This is congressional policy, not only is it
10 congressional policy it's quite clear from reading
11 the opinions of the Supreme Court that the point of
12 view of the justices over a period of time that had
13 there not been minimization, the court would have
14 required it in one form or another for
15 constitutional reasons.

16 So what is not on the tapes is not on the
17 tapes because Congress decided it shouldn't be on
18 the tapes as a matter of policy, and in my view had
19 they not done so the Supreme Court would have
20 decided as a matter of constitutional law these
21 things should not be recorded.

22 I have not found a case in which a defendant
23 has said to a court I've been prejudiced because
24 there's a really good piece of evidence that I think
25 would be recorded and they minimized it and so

1 therefore I lost my opportunity to use it. I have
2 not found a case that says undue minimization or
3 minimization in general, even though it's perfectly
4 within the statute, gives a right to relief for
5 somebody who thinks that there's evidence that might
6 have been helpful that wasn't preserved. This is
7 congressional policy, I don't think the argument has
8 been made much that the government should have
9 recorded something and didn't.

10 And, indeed, in many cases, minimization
11 would allow the defense to make an assertion that
12 there would be evidence that would be useful to it
13 but unfortunately it wasn't recorded, defendants
14 have made this argument before, and they could make
15 this argument free from the contradiction by actual
16 tapes. It allows anybody to say that if only they
17 recorded it, they would have seen X, Y or Z. So I
18 don't think the over-minimization argument goes
19 anywhere in this case. I think it is just plain
20 wrong.

21 And moreover, virtually every conversation
22 that is played here, it was played in the first
23 trial and is going to be played in the second trial,
24 was participated in by witnesses who are alive and
25 well and available to testify, including, among

1 other people, the defendant himself and the people
2 he was conversing with, and if their memory differs
3 from what is on the recording, they can testify to
4 that, but more importantly, if they think there was
5 something that's important that wasn't recorded,
6 they can say, yes, this is what somebody said or
7 this is what I said.

8 The minimization argument is too weak to
9 deserve more time for us to address. It is a
10 consequence of minimization that some things that
11 should have been recorded weren't recorded, but the
12 real difficulty that can sometimes be presented by
13 these cases isn't presented here, and that is, for
14 example, when unavailable witness who is no longer
15 around can't testify as to what inculpatory or
16 exculpatory information was not on the recording.

17 So my finding is that minimization was
18 properly conducted, some of the original errors
19 which occurred only in the very earliest stages of
20 the Title 3 and were promptly corrected thereafter,
21 and I agree with Judge Holderman's assessment and
22 conclusions at his hearing are, in any event,
23 matters that do not prejudice the defendant in this
24 case, or, for that matter, any other potential
25 defendant in any way. So the motion to suppress

1 based on improper minimization is denied.

2 I now have a motion having to deal with
3 proposed redactions and the government's
4 consolidated motions in limine, am I missing
5 anything?

6 MR. SCHAR: Judge, there's a request for a
7 FBI report that was filed.

8 THE COURT: Right. I considered that
9 previously. I have re-read the report. There is
10 nothing in it -- and the proposed use of it by the
11 defense is the impeachment of the witness Balanoff,
12 there is nothing in that report that could be used
13 for impeachment. There is in fact nothing in that
14 report that's impeaching, but leaving aside that
15 fact alone, there is nothing that can be used for
16 impeachment. So that motion is denied again, or,
17 more precisely, I'm reconfirming my ruling, which in
18 this particular case is obviously on a more detailed
19 footing than it was the first time because I heard
20 Balanoff's testimony.

21 So I'm now down to redactions and motions in
22 limine, unless somebody tells me I forgot something.
23 I have a lot of motions here and I would not feel
24 insulted if somebody says to judge, you forgot X.

25 MR. SOROSKY: No, no, no.

1 THE COURT: Good. I mean, this is the time
2 to speak.

3 Consolidated motions in limine --

4 MR. GOLDSTEIN: Your Honor, sorry to
5 interrupt. Just as to the consolidated motion in
6 limine, we would like an opportunity to respond.

7 THE COURT: I would actually like to see the
8 response, and the reason I would like to see the
9 response is, there are certain general propositions
10 here which I accept and which I think you know I'm
11 going to accept, in fact I accepted it the first
12 time, and the reason I'd like to hear the response
13 is because you may in this particular case have
14 specific instances in which you think perhaps the
15 general rule should not apply.

16 The motion to preclude questions and comments
17 that invite the jury to speculate on unplayed or
18 unrecorded conversations is largely going to be
19 granted. I sustained objections to many of these in
20 the first trial and I will, as a general rule,
21 sustain them in this trial and may in fact issue
22 specific orders precluding their use so that I don't
23 have to sustain the objection.

24 And with respect to that which is unplayed, I
25 don't actually conceive of some permissible use of

1 that, but maybe there is something.

2 Motion to exclude evidence and argument
3 concerning unlawfulness and non-corrupt conduct,
4 this is an issue which I have raised before and used
5 the tired old example of the fact that if somebody
6 robs ten banks on ten separate days of the year,
7 it's no defense to introduce the fact that on
8 355 days of the year he didn't rob a bank.

9 MR. SOROSKY: Your Honor, if I can interrupt
10 you --

11 THE COURT: I think maybe you want to wait
12 until I'm done, because --

13 MR. SOROSKY: Okay, I'll wait until you're
14 done.

15 THE COURT: Because I think you're going to
16 have some stuff that you may want to put in writing.

17 The motion to exclude opinion evidence
18 regarding legality and regarding the usual and
19 normal practices is granted to the extent that the
20 defense intends to use lay witnesses, which is
21 actually the point the government is making. I do
22 not believe the government is making the point that
23 you can never introduce evidence of this sort, you
24 can under certain circumstances, but to do so you
25 have to have an expert witness, which of course

1 you're free to do.

2 with respect to evidence and arguments
3 regarding custom and practice or
4 you-can't-convict-me-because-everyone-does-it
5 argument, which is the argument that's being made,
6 is an argument that you cannot make the way it was
7 made. The same is true of questions regarding the
8 absence of objections by others. It became clear as
9 time went on that the argument evolved into there
10 were a lot of lawyers in the room with defendant and
11 nobody said it was illegal and therefore he was
12 entitled to rely on this silence, which is not the
13 law, the law is very clear on that point.

14 I do not by so ruling exclude the possibility
15 that the defendant testifies and says I am a lawyer,
16 I looked at the law and I thought it was legal, I
17 had a good faith belief, I'm not excluding this, I'm
18 talking about the opinions that he might draw from
19 the fact that somebody didn't say, "wait, stop,"
20 immediately.

21 A couple of issues that specifically ought to
22 be addressed is the government's position that
23 events occurring with respect to the defendant's
24 conduct after he was arrested, or at any point in
25 time after he knew that he was the subject of an

1 investigation and the subject of recordings, is an
2 issue that I think was not fully addressed the first
3 time and ought to be addressed now. And the reason
4 I would be willing to see briefing on this is it is
5 new, we didn't deal with it the last time and it
6 presents a live issue.

7 MR. SOROSKY: I also think another new issue
8 is the concept of not being able to mention what was
9 mentioned in the first trial concerning the fact
10 that Children's Memorial Hospital received the
11 allocation of money.

12 THE COURT: Yeah, it's essentially all part
13 of a piece. Because the government's position is is
14 that once he realizes that somebody might know about
15 all of this stuff, you can't give him any credit for
16 doing the right thing because he's doing it because
17 he's trying to get out from under the troubles that
18 he's in.

19 Now, the reason this has to be addressed is,
20 a lot of it depends, as a lot of the first trial
21 depended, on what kind of evidence the defense
22 offers. One of the distinctive patterns of the
23 defense in this particular case and caused a lot of
24 sustaining of objections was the desire of the
25 defense, not uncommon for defense counsel in these

1 and other cases, is to convey information for the
2 question and not the answer, and usually the only
3 way you do that is violate a rule which says you
4 can't assume a fact that is not in evidence, and
5 many questions did, and I don't want a recurrence of
6 that.

7 This is a case in which much of what the
8 defense wants to introduce can pretty much only be
9 introduced by a defendant on the witness stand, not
10 all of it but some of it, and we're going to have to
11 face that issue.

12 In the first trial, it was simpler to deal
13 with because there had been an unequivocal
14 statement, defense counsel in opening statement that
15 the defendant was going to testify, and several of
16 my rulings gave leeway to the defense because okay,
17 ask the question because we've been told that the
18 defendant is going to get up on the witness stand,
19 and in the end you would up with assertions that the
20 prosecution wasn't able to confront. And while I
21 don't think the prosecution's right to confront
22 witnesses has a constitutional basis, it is in fact
23 a prosecution's right as well, and in many cases
24 they were in fact, by the way the case was tried,
25 denied their own right to confront the defense.

1 So we have to deal with this in terms of
2 events which happened after revelation and the other
3 issues that are raised. What I tried to do is tell
4 you that in at least in the abstract, almost all of
5 the positions taken, in fact all the positions taken
6 in these motions in limine are presumptively correct
7 in the abstract, but they might not be correct in
8 terms of specific offers. And your responses,
9 instead of doing a general briefing, should say this
10 is what we intend to do, this is what we want, this
11 is what we want to try to prove, and this is how we
12 intend to prove it. Because some of the things in
13 the classic example I gave was, a belief that what
14 was done was legally right, and it sort of came in
15 through the back door the first time, and if it
16 comes in this time it's going to come in through the
17 front door with the appropriate protections, but I
18 don't know what you intend to do and you're going to
19 have to tell me. So that's my only commentary with
20 respect to that.

21 With respect to the redactions, the defendant
22 has objected to some proposed redactions. The
23 government when they filed the proposed redactions
24 gave a justification for it, but I think the
25 government may want to respond to specific

1 objections. So we can do deal with that as time
2 goes on. I don't think we're going to have a lot to
3 do with these things. There were a couple of
4 redactions here that the government made that the
5 defendant objected to and I was in a position of
6 wondering why, I was wondering why the government
7 redacted it and I was wondering why the defense
8 objected to the redaction; in other words, I read
9 the evidence a different way, I thought some of the
10 stuff they redacted was actually good for the
11 prosecution and what the defense wanted to put in
12 was not so good for the defense, but the judge never
13 knows as much about the evidence as the lawyers do,
14 so I could be wrong about that.

15 Basically, I think we're done with this stuff
16 I have. So now we can deal with what the lawyers
17 have.

18 MR. SCHAR: Judge, we filed a motion related
19 to additional redactions that falls into play, I
20 think what Your Honor has been referring to and we
21 will respond by Monday, if that's okay --

22 THE COURT: Yeah.

23 MR. SCHAR: -- if not earlier.

24 But I believe there's also additional
25 objection to redactions that were in the first trial

1 that.

2 THE COURT: Right.

3 MR. SCHAR: I don't know if you wanted to
4 respond to that.

5 THE COURT: No, I don't. I've dealt with
6 that. I regard that position as essentially we're
7 not waiving this. And I don't blame them for doing
8 that because you have raised the issue of redactions
9 and if they remain silent in the face of this, were
10 I in their position I would be concerned about
11 waiving, but I have felt with the issues, I don't
12 see new arguments, and I'm not going to reconsider
13 those after having read what I've read.

14 MR. SCHAR: Okay. Thank you, Judge.

15 THE COURT: Anything else from anybody?

16 MR. SOROSKY: Just two comments that the
17 defense would like to make, one concerning the first
18 issue before the Court concerning filing of motions
19 under seal. The defense has always been in the
20 position that we would like everything opened and
21 not under seal. We only file motions under seal to
22 comply with the law and the court orders.

23 Secondly, focusing on the motion in limine
24 and this issue about asking questions of as to where
25 the defense asks the witness questions is it legal.

1 We certainly agree with Your Honor when Your Honor
2 says if someone is on trial for a specific offense
3 and the defense tries to show that he doesn't commit
4 other offenses therefore the defendant is sort of a
5 good guy. We certainly agree that there's no basis
6 for a question like that, but let me just give one
7 example that everyone will remember and this
8 occurred many, many times during the trial: The
9 prosecution brought out at great length how Governor
10 Blagojevich made have had a peccadillo in that he
11 spent large sums of money on suits. I would assume,
12 to the best of my knowledge, I could say this,
13 that's not a crime to spend a lot of money on suits,
14 but as a lawyer I can see that perhaps the
15 prosecution may feel, oh, we'll gain a granule of
16 sugar with the jury by saying he spends excessive
17 amounts of money on suits.

18 So after the prosecution perhaps spends
19 literally ten to fifteen minutes with documents and
20 so forth as to how much money he spends on suits,
21 the defense just wants to ask one question, "well,
22 there's nothing illegal about that, is there," and
23 then the objections come.

24 So in many of those situations where the
25 defense asks the question "is it illegal," it's sort

1 of like the government throws a punch at us and we
2 can't punch back, because there is no better defense
3 to the whole issue for the suits, for example, by
4 the defense asking "well, what's illegal about that,
5 Ms. Schindler," she was the IRS agent who showed all
6 that money spent on suits, and she would say it's
7 not illegal. And we're precluded from doing that,
8 but this is a question which was clearly invited by
9 the prosecution. And this is just one example
10 that's fresh in my mind now and perhaps fresh in
11 everyone's mind once I mention it, but there were
12 many times when that went on.

13 So I think some rule has to be crafted if the
14 prosecution is going to continue along those tactics
15 and the defendant is to receive a fair trial. And I
16 may not be wise enough to know how to do it, perhaps
17 an instruction by the Court every time a question
18 like that is asked that it's not illegal to spend a
19 lot of money on suits. Or I don't know how else to
20 do it, or perhaps we've got to go over the
21 prosecution's case to see what they can or cannot
22 ask, but I think this is a problem in this trial.

23 THE COURT: Mr. Schar.

24 MR. SCHAR: Judge, of course it's not a
25 problem in this trial, because the question is a

1 non-sequitur to the issue. The issue is providing
2 motive evidence, things like that. If he thinks
3 that there is something improper about the mode of
4 evidence or the degree of it, the extent of it,
5 certainly they have a right to object, and in
6 response Your Honor will rule just as we object. It
7 doesn't mean that an agent whose actual job is not
8 to determine illegality in the context of suits
9 should be asked the question whether it's illegal.
10 Beyond that, obviously, the issue is in terms of
11 things like that if the evidence is part of a larger
12 scheme that explains why in fact there was
13 illegality, whether he buys the suit in and of
14 itself being illegal or not legal is not the issue,
15 because, frankly, the answer may be to the context
16 he was spending his money recklessly and ended up
17 needing more money and did the following, maybe it
18 is illegal, but that's why we don't allow lay
19 opinions on this issue, and I think Your Honor has
20 laid that out.

21 I'm happy to talk about the first issue about
22 them actually wanting everything in the public
23 domain, but I assume that was more of a statement
24 for others and not actually Your Honor.

25 THE COURT: Well, I'm not going to address

1 that one either.

2 The problem I have is that I still think,
3 Mr. Sorosky, that you're dragging into the case an
4 issue that isn't there, although I understand why
5 you would do that. Because the government has never
6 hinted at all that it's illegal to spend a lot of
7 money on clothes. In fact, I don't think the
8 government ever took the position that anything he
9 was spending was illegal. It's illegal to buy dope,
10 the government didn't say anything about the
11 defendant doing that. It's illegal to buy a machine
12 gun. There are lots of things that's illegal to
13 buy. What the government was simply saying is he
14 spent himself into a hole and for this reason he
15 needed money. And, in fact, the question that the
16 defense lawyer asks when he says to the witness,
17 like the IRS agent, there's nothing illegal about
18 spending a lot of money on clothes, or in this I
19 think was not particularly at issue so it's
20 hypothetical, nothing illegal about spending a lot
21 of money on caviar, nothing illegal about buying
22 expensive things, buying fancy cars, but what the
23 defense is doing is they are refocusing the
24 government's case in an area where the government
25 didn't focus in the first place, because the

1 government is never making a claim that it's
2 illegal. And what the defense does when they say
3 well it's not illegal, you have planted in the
4 jury's mind or in a juror's mind the idea that what
5 the government is contending is that it was illegal
6 somehow for him to spend a lot of money on clothes,
7 and that's not what the government is doing.

8 So basically what we have here, and it's
9 fairly common, is what the government is doing is
10 showing that he's spending a lot of money on
11 clothes, spending himself into a hole on things like
12 clothes, hoping that the subtext to the message to
13 the jurors is this is really not a very admirable
14 thing that he's spending a lot of money on clothes,
15 and that's why the defense gets exercised about that
16 kind of examination by the prosecution, that this is
17 the undertone of no, no, it's not illegal but all of
18 us here, you, members of the jury, members of the
19 public, don't spend this much money on clothes and
20 this is a ground to disapprove of the defendant in
21 this particular case. And to meet that, to meet
22 that, the defense says something about there's
23 nothing illegal about it.

24 This is people pushing emotional triggers in,
25 and I don't think it's a particularly good idea and

1 I am perfectly willing to ask the government to make
2 these points quite clear. And there was another
3 point in the course of this trial where the
4 government was trying to convey a message with
5 respect to associations of the defendant with other
6 people, other disreputable people, which I stopped
7 them from doing. I don't think that the list of
8 expenditures and the fact that he's basically
9 pushing himself into debt, in itself, conveys that.
10 If you think they overdid it with respect to
11 emphasizing the expensive stuff he spent money on,
12 and the price of the suits, and a variety of other
13 things, if you want me to require the government to
14 be less flamboyant with that issue, I'd be perfectly
15 willing to consider that, but I don't really want
16 this kind of thing where a claim not made by the
17 government is inserted into the case because pretty
18 much the defense feels the way to get themselves off
19 the hook.

20 So if you believe my little lengthy overlong
21 speech right now was designed to send a message to
22 both sides, you are right.

23 Anything else you want to raise?

24 MS. SPEARS: Your Honor, actually defense --

25 THE COURT: Wait. Wait. Let them finish. I

1 won't shut you out.

2 MR. SOROSKY: No, nothing else, nothing else
3 concerning all of the motions you've ruled on.

4 MR. GOLDSTEIN: When would you like our
5 reply, Your Honor?

6 THE COURT: As soon as possible.

7 MR. SCHAR: Judge, just in terms of getting
8 ready for trial, Ms. Hamilton correctly points out,
9 we're obviously going to have to be doing transcript
10 binders again. If we could have a date in the early
11 part of next week so we might be able to come back
12 to get a ruling about the redaction issues so we can
13 put that in motion.

14 THE COURT: I was thinking Monday.

15 MR. SOROSKY: What time do you want us?

16 THE COURT: Talk to Mr. Walker. He has a
17 better idea of my schedule.

18 MR. SOROSKY: Okay.

19 THE COURT: Okay, anybody else except Ms.
20 Spears?

21 MR. SCHAR: Nothing else.

22 MR. SOROSKY: No.

23 THE COURT: Now.

24 MS. SPEARS: Thank you. Defense counsel's
25 comment with regard to the Chicago Tribune motion

1 raises one more points for me, anyway. With regard
2 to the sealed motions, most of it if not all of
3 which were initiated by the defense, a couple of
4 them, and it's really hard to follow them in
5 listening to the rulings and I'm sure the press has
6 probably the same questions, two of them at least
7 were just noted to be a sealed motion, number 646
8 and 6451, and it's hard to even know if that was one
9 the motions the Court ruled on or not. So if it
10 would be possible to know what specific motions
11 those are.

12 THE COURT: Ask the lawyers and they'll tell
13 you.

14 MS. SPEARS: For the record.

15 THE COURT: They'll tell you, you can sit
16 with one lawyer from each side and they'll tell you
17 which motion is which.

18 MS. SPEARS: Except it's not just me, Your
19 Honor, it's the public --

20 THE COURT: Yes, but the thing is is somebody
21 can post something on a board, I don't want to do it
22 here, not now.

23 MS. SPEARS: That would be corrected along
24 with the other filings?

25 THE COURT: Yeah.

1 MS. SPEARS: Because sitting here today, it's
2 hard to even know what the Court was ruling on.

3 THE COURT: Well, you knew what the Court's
4 ruling was, but if you want to have it attached to
5 some particular motion ... I think basically
6 because of the way I ruled, you'll understand what
7 the motion was, and I believe that the grounds will
8 be disclosed to you sooner rather than later in the
9 actual motions.

10 MS. SPEARS: Perhaps even in the minute
11 order, if it's simply reflected what the motion was,
12 if it was one of the ones 646 or 651, the one that
13 was ruled on today, that would be helpful for
14 everybody involved.

15 THE COURT: Sure.

16 MS. SPEARS: Thank you.

17 THE COURT: You have received an important
18 missive, Mr. Sorosky?

19 MR. SOROSKY: Pardon me?

20 THE COURT: You have received an important
21 missive?

22 MR. SOROSKY: No, we're trying to -- perhaps
23 we can answer her question right now.

24 THE COURT: That would be fine, but maybe you
25 can do it when I get off the bench.

1 MR. SCHAR: Judge, I think we can resolve
2 this without --

3 MR. SOROSKY: I think the Court did rule on
4 the numbered motions she referred to.

5 THE COURT: Right.

6 MR. SOROSKY: Right.

7 THE COURT: There shouldn't be much left.

8 MR. SOROSKY: Right. I think the numbers
9 that Ms. Spears referred to were ruled on by the
10 Court today.

11 THE COURT: Okay.

12 MS. SPEARS: I hate to be a thorn here, but
13 it is, for the public at large, if it could just be
14 put in the minute order what's issued today what the
15 name of the motion was --

16 THE COURT: I was actually trying to get this
17 to you quicker than the minute order --

18 MS. SPEARS: Right.

19 THE COURT: -- which is to have them tell you
20 and then you can tell everybody else and then we'll
21 put it in the minute order for the people who
22 weren't here.

23 MS. SPEARS: All right.

24 THE COURT: Okay? Anything else?

25 MR. GOLDSTEIN: Your Honor, just had one

1 question as far as scheduling. If you want us back
2 on Monday, we can address it then, but just as far
3 as when the jury is coming in to fill out the
4 questionnaire and when we'll start questioning them.

5 THE COURT: what's going to happen so far as
6 I now understand it, the initial mailing that went
7 out, the same mailing that went around last time
8 which said your name is on a list for special panel
9 for trial that will last X number of weeks, are you
10 available. I am told that we are getting a fairly
11 large number of yeses I will be available, and
12 that's basically the only question they're asked,
13 that and any other reason.

14 what happens is they come in and they fill
15 out the questionnaire. My guess, and it's only a
16 guess, would be that the earliest we could begin
17 jury selection, that is to say put people in the
18 box, will be on April 21st. I will not sit on the
19 22nd basically because, with one exception, I'm
20 going to advise the jury that we don't sit on
21 Fridays, and I'd like to be consistent with that.

22 It's possible because of the mechanics of
23 what we're dealing with here, we might not actually
24 start with putting jurors in the box on the 21st,
25 which means that we will start the Monday of the

1 next week, but that I've left flexible.

2 So that's basically where we are. And then
3 the lawyers obviously are going to have to look at
4 the questionnaires and we'll move along. We have a
5 fairly good idea of how many jurors we need to get
6 to a jury based on what happened last time, and also
7 based on what happened in Family Secrets. But there
8 could be a possibility that we get more than enough
9 jurors who are willing to serve, but because of the
10 luck of the draw we have too many of them are
11 disqualified for other reasons and we don't know, so
12 that's the unknown part.

13 So it's possible that there won't be opening
14 statements until the middle of the week after we
15 begin, it's possible they might come more quickly.
16 And then that's the one thing that I think makes a
17 re-trial a little easier, that everybody understands
18 the mechanics and what kind of equipment they have
19 to have.

20 The one last thing I have on my list here has
21 to do with Ms. Spears and her request, which is I
22 understand that you are going to make efforts to
23 give to distribute promptly motions in papers that
24 are no longer entirely sealed but for which there
25 have been redactions, it's important that you give

1 me copies of those as soon as they're available and
2 I would like to see them soon.

3 MR. SCHAR: Would you like to see them before
4 they are publicly docketed?

5 THE COURT: No, I'm satisfied. I just want
6 to make sure it's done.

7 Anything else?

8 MR. GOLDSTEIN: Your Honor, one more thing.
9 You had mentioned --

10 THE COURT: You said one more thing before.

11 MR. GOLDSTEIN: Well, it's a response to Your
12 Honor's discussion as far as scheduling. It would
13 be our preference, if Your Honor is willing to
14 consider, that we start questioning jurors on that
15 Monday, because I know that the questionnaires only
16 stays in court that will give us the time on
17 Wednesday evening Thursday and possibly Friday to
18 review those questionnaires. So if your Honor takes
19 into consideration, if we could possibly start
20 questioning jurors on Monday.

21 THE COURT: I might but I probably wouldn't,
22 the reason I probably wouldn't is, you're not going
23 to be asked to exercise your peremptory challenges
24 right away, you know, that comes at the end of the
25 process by which time you will have had plenty of

1 time to look at the questionnaires to make those
2 kinds of judgments. And with respect to challenges
3 for cause, those, too, come later, and I do that
4 deliberately so that you will have a chance to think
5 about what's in the questionnaire. Given the nature
6 of the questionnaires and how they're answered, it
7 may turn out that I'm wrong and you're right, in
8 which case we'll do it differently.

9 okay?

10 MR. SOROSKY: One other thing, so --

11 THE COURT: Do you, like, agree that each one
12 of you will take one other --

13 MR. SOROSKY: Actually two things. One, so
14 the defendant may not have to be here on the 20th?

15 THE COURT: The defendant should be here.

16 MR. SOROSKY: Should be here on 20th?

17 THE COURT: Just in case.

18 MR. SOROSKY: Okay. Secondly, is it possible
19 to get the titles of all the redacted motions in the
20 order? Apparently that will help the media.

21 THE COURT: Why don't you just make a list
22 and we'll take care of the minute order part of it.

23 MR. SOROSKY: Okay. Thank you.

24 MS. SPEARS: Thank you, Your Honor.

25 MR. SCHAR: I think there may be one related

1 medical records that we may want redactions to part
2 of the title, but otherwise this won't be an issue.

3 THE COURT: That's fine.

4 Thank you.

5

6 (which concluded the proceedings had on this
7 date in the above entitled cause.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER

/s/Blanca I. Lara date

Blanca I. Lara

Date